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No. 2597

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

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FRANK CRESTA et al.,  
*Petitioners.*

vs.

T. V. MAXWELL et al.,  
*Respondents.*

In the Matter of the Estate of  
DOMINGO GHIRADELLI et al.,  
Bankrupts.

## BRIEF FOR RESPONDENTS.

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E. J. PRINGLE,  
*Attorney for Respondents.*

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Filed this.....day of October, 1915.

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FRANK D. MIONCKTON, Clerk.

By.....Deputy Clerk.



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The petition in bankruptcy in this matter was filed in the United States District Court on the 6th day of June, 1870. It has, therefore, been pending, always in a more or less animate condition, in that Court for upwards of forty-five years. The Court will, therefore, see that, though the case is at last practically ready to be closed, nearly all the original claimants and their attorneys have predeceased it.

### Argument.

Upon the title page of the printed petition or record it is stated that the appeal is taken under Section 24b of the Bankruptcy Act of July 1st, 1898, i. e., the present act under which the Courts are operating. The same statement appears again on page six and in one or two other places in the record. It is also claimed by counsel for the appellant on page seventeen of his brief and in numerous other places that this act controlled in the matter of distribution of dividends and in the employment of attorneys. This is not so.

The act of June 7, 1878, Chap. 160, Vol. 20, U. S. Stat. at Large, page 99, repealed the old bankruptcy act approved March 2, 1867, under which act this matter was commenced, but provided that said act shall continue in full force and effect until matters pending at the time of repeal shall be fully disposed of in the same manner as if said act had not been repealed.

Counsel for appellants enters into a lengthy argument to show that Tomaso Cresta, the original claimant, being dead, the register and assignees in this matter had constructive notice thereof, and should have made checks for dividends to some representative of the deceased Cresta, and that, in fact, the officers of the United States District Court, viz., the register and assignees were parties to the probate proceedings, if any were taken, which latter fact the appellees do not admit, as proceedings *in rem*.

It hardly seems necessary to answer this argument. The cases cited by counsel do not hold such to be the law. It is well settled that the United States Courts and its officers acting in bankruptcy matters cannot be interfered with by Courts constituted in other jurisdictions.

See,

Blumenstiel's Law and Practice in Bankruptcy, p. 384.

Section 5102 of Revised Statutes provides that when a dividend is ordered, the register and assignees shall prepare a list of creditors entitled to the dividend and make up a sheet showing the amount each creditor is entitled to. Thereafter under rule XXVIII, the assignees are required to follow this sheet and make out checks in the name of each claimant for the amount set opposite such name by the register. The law and this rule were strictly followed in this case. All these steps are very fully set forth in the answer which appears in the record, and it is not necessary to repeat them here. These assignees and the register as officers of the Court have done what the law and the rules of the Court require them to do, and nothing more nor less. The record shows no notice to them actual or constructive of the death of Tomaso Cresta, but had they had such notice, there is nothing that would have required them, or made it proper for them, to depart from the method pursued as set up in the answer.

As a result of the foregoing the practice is to make all checks in the name of original claimants and deliver to such claimants or their legal representative, thereafter to be paid in coin by the depository when regularly endorsed, in accordance, if the claimant be dead, with any letters testamentary or of administration or decrees of distribution, issued by a probate Court, which such representative may produce to the bank.

It is immaterial who received the checks. Delivery to an attorney at law conferred no authority to collect.

These particular checks having been paid on wrong, not to say forged, endorsements, the responsibility rests on the bank that paid them and guaranteed such endorsements to the Bank of California, and neither on this estate nor upon the depository of its funds, nor upon these assignees.

We, therefore, respectfully submit there has been no error.

Dated, San Francisco,  
October 25, 1915.

E. J. PRINGLE,  
*Attorney for Respondents.* 6